



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: SEPTEMBER 16, 2022

IN THE MATTER OF:

Appeal Board No. 622625

PRESENT: MARILYN P. O'MARA, MEMBER

In Appeal Board Nos. 622620, 622621 and 622622, the claimant appeals from the decisions of the Administrative Law Judge filed March 30, 2022, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective March 23, 2020 through February 21, 2021, on the basis that the claimant was not totally unemployed and/or had earnings that exceeded the statutory limitation; charging the claimant with an overpayment of \$9,576 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4), \$9,600 in Federal Pandemic Unemployment Compensation

(FPUC) benefits recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, \$8,568 in Pandemic Emergency Unemployment Compensation (PEUC) benefits recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, and \$600 in Lost Wages Assistance (LWA) benefits recoverable pursuant to 44 CFR Sec. 206.120 (f)(5); and reducing the claimant's right to receive future benefits by 288 effective days and charging a civil penalty of \$4,251.60 on the basis that the claimant made willful misrepresentations to obtain benefits.

In Appeal Board Nos. 622623, 622624 and 622625, the claimant appeals from the decisions of the Administrative Law Judge filed March 30, 2022, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective April 14, 2020 through February 16, 2021, on the basis that the claimant was on a paid vacation period; charging the claimant with an overpayment of \$2,520 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4), \$1,200 in Federal Pandemic

## Unemployment

Compensation (FPUC) benefits recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, and \$1,386 in Pandemic Emergency Unemployment Compensation (PEUC) benefits recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by 144 effective days and charging a civil penalty of \$543.60 on the basis that the claimant made willful misrepresentations to obtain benefits.

In Appeal Board Nos. 622626, 622627 and 622628, the claimant appeals from the decisions of the Administrative Law Judge filed March 30, 2022, which sustained the initial determination holding the claimant ineligible to receive benefits, effective April 2, 2020 through April 27, 2020, on the basis that the claimant was not capable of work, as modified to be effective April 27, 2020, only; and sustained the initial determinations charging the claimant with an overpayment of \$1,008 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4), and \$600 in Federal Pandemic

Unemployment Compensation (FPUC) benefits recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$100 on the basis that the claimant made a willful misrepresentation to obtain benefits, as modified in accordance with the decision and referred the amounts of the recoverable overpayment, the forfeit penalty and the civil penalty to the Department of Labor for recalculation.

At the combined telephone conference hearing before the Administrative Law Judge, testimony was taken. There were appearances by the claimant and on behalf of the employer.

Our review of the record reveals that the case should be remanded to hold a hearing. Testimony and evidence was not taken regarding whether the claimant's certifications included any questions regarding the claimant's earnings for the weeks at issue and, if so, how the claimant answered these questions. Additional testimony and evidence is also needed regarding how many days, if any, the claimant worked each week through January 17, 2021 and how many

hours, if any, the claimant worked during each of the weeks beginning January 18, 2021, as well as how the claimant certified for the weeks at issue. The claimant shall be questioned regarding the days he worked each week from March 3, 2020 through January 17, 2021; how many hours he worked each week from January 18, 2021 through February 21, 2021; his earnings each week from March 3, 2020 through February 21, 2021; and how he certified regarding his work and earnings for each week during the entire period, including his certifications regarding his earnings. The claimant shall be asked about his certifications during the period in issue, including certifications prior to May 3, 2020 and May 10, 2020. The Judge shall confront the claimant with the screenshots, Hearing Exhibits 5 and 8, regarding the certification questions and with the Certification Record Report, Hearing Exhibit 6, regarding the claimant's certifications. The Judge may take further relevant and material evidence as the Judge deems necessary.

Now, based on all of the foregoing, it is

ORDERED, that the decisions of the Administrative Law Judge be, and the same hereby are, rescinded; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision on the issues, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MARILYN P. O'MARA, MEMBER